Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE

In The
Supreme Court of The United States
October Term 1998

DOROTHY JOSEPH,
Petitioner,

v.

THE NYC BOARD OF EDUCATION,
Respondent.

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Second Circuit Court of Appeals decision conflicts with the well established case law from other Appellate Circuits and with other District Court decisions, thereby adversely affecting a rule of retroactive application of the 1991 Amendments to Title VII.

2. Whether the Second Circuit Court of Appeals erred in declining to retroactively apply the 1991 Amendments of the Civil Rights Act, §102(c) providing for a jury trial and compensatory and punitive damages to the Petitioner's claims of discriminatory denial of tenure and unlawful termination.

3. Whether this Court's decision in **Landsgraff v. USI Film Products, 114 S.Ct. 1483** provides for the retroactive application of the 1991 Amendments of the Civil Rights Act providing for a jury trial in instances where pre-enactment conduct had occurred and the case was filed after the amendments were enacted.

PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Respondent New York City Board of Education, on information and belief, is a quasi-municipal corporation located within the Eastern District of New York.

Petitioner Dorothy Joseph is a former educator who was employed by respondent New York City Board of Education for approximately thirty years. Specifically, petitioner was employed by respondent as a teacher, acting principal, assistant principal or principal from 1956 to August 1991 and as principal of P.S. 27 in Community School District 15 in Kings County, the borough of Brooklyn in New York City from September 1, 1987 to August 1991.

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Petitioner respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on March 16, 1999.

OPINION BELOW

The opinion of the Court of Appeals is reported at ____ F.3d _____ (2nd Cir. 1999), and appears at Appendix B. The opinion of the District Court is not reported. It appears as Appendix A.

STATEMENT OF BASIS FOR JURISDICTION IN THIS COURT

(A) The opinion sought to be reviewed was entered on March 16, 1999. (Apdx. A.).

(B) This Court has jurisdiction to review the judgment entered by the Court of Appeals for the Second Circuit, on a writ of certiorari pursuant to Supreme Court Rule 10 on the ground that this opinion conflicts with the decisions of another United States Courts of Appeals on the same important matter and this decision involves an important question of federal law that has not been, but should be, settled by this Court, specifically the retroactive application of the 1991 Amendments of the Civil Rights Act provisions providing for a jury trial and for compensatory and punitive damages.

CONSITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THE CASE

The appropriate application of the provisions of the 1991 Amendments to the Civil Rights Act providing for a jury trial and compensatory and punitive damages is at issue in the instant case.

STATEMENT OF THE CASE

Background

The central issue on appeal is whether petitioner Dorothy Joseph is entitled to a jury trial and compensatory and punitive damages for her claims of discrimination in employment (denial of tenure and unlawful termination) based on race brought against Respondent New York City Board of Education under the 1991 amendments to Title VII of the Civil Rights Law of 1964, 42 U.S.C. §2000e et seq.. The United States District Court determined that petitioner Joseph's claims arose in June 1991 prior to the November 1991 enactment of the amendments to the Civil Rights Act providing for a jury trial and compensatory and punitive damages. The District Court further concluded that said amendments were not retroactive. The Court of Appeal for the Second Circuit affirmed the District Court's decision.

Petitioner Joseph's Employment With Respondent Board of Education

Petitioner Dorothy Joseph, an African-American woman, is claiming that respondent New York City Board of Education had discriminated against her based on her race in denying tenure to petitioner and terminating her employment as a school principal. Specifically, respondent Board employed Ms. Joseph in the capacity of teacher, acting

principal, assistant principal, or principal from 1956 to August 1991. From September 1, 1987 to August 1991, respondent Board employed Ms. Joseph in the capacity of principal of New York City Public School 27, in the Red Hook section of Brooklyn in Community School District 15. Pursuant to an agreement dated August 16, 1991 between Ms. Joseph and respondent Board, Ms. Joseph retired from respondent Board's employment and retained her rights to pursue contractual or legal remedies regarding denial of tenure.

By letter dated June 21, 1991 from then Community Superintendent of District 15, William Casey, petitioner was notified that Superintendent Casey was recommending that she be denied tenure as a school principal. In that same letter Ms. Joseph was notified of her contractual right to have the decision reviewed by the Chancellor's Committee. Ms. Joseph did, in fact, seek review and by letter dated February 4, 1992, after hearings before the Chancellor's Committee on November 8, 12, 15 and December 3, 1991, Chancellor Fernandez indicated his concurrence with the Committee's unanimous recommendation to deny Ms. Joseph tenure. By letter dated February 13, 1992 Superintendent Casey reaffirmed denial of tenure to Ms. Joseph indicating that it was based on his review of the Chancellor Committee's recommendation.

The Proceedings Below

Ms. Joseph filed a complaint with the New York State Division of Human Rights on March 6, 1992. Ms. Joseph subsequently received a right to sue letter and on June 24, 1994 filed a complaint against respondent Board in the United States District Court, Eastern District of New York. Ms. Joseph's complaint alleged that respondent Board, through the actions of Superintendent Casey, had engaged in a pattern of discrimination against P.S. 27 generally and Ms. Joseph specifically by, among other things, denying resources, thwarting efforts to improve school conditions, and failing to cooperate, and thereby manifested racial animus in denying plaintiff tenure and unlawfully terminating her employment. Ms. Joseph sought declaratory and injunctive relief as well as compensatory and punitive damages and, most importantly, a jury trial.

On December 24, 1996 respondent Board filed a motion to strike Ms. Joseph's demand for a jury trial and compensatory and punitive damages. By an unpublished Memorandum and Order dated February 3, 1997 the Honorable John Gleeson granted defendant's motion to strike Ms. Joseph's demand for a jury trial and compensatory and punitive damages. The Court entered judgment for respondent Board on February 2, 1998 after a bench trial. A Notice of Appeal was filed by Petitioner Joseph on February 27, 1998.

By its decision dated March 16, 1999 (Apdx. A), the Court of Appeals for the Second Circuit held that

The District Court had jurisdiction pursuant to federal question jurisdiction, 28 U.S.C.§1331, based upon the fact that Petitioner Joseph's complaint alleged a cause of action for discrimination in employment pursuant to Title VII of the Civil Rights Act, 42 U.S.C. §2000e, et seq..

The Court of Appeals had jurisdiction pursuant to 28 U.S.C. §1291 as a final decision of the District Court.

REASONS FOR GRANTING THE WRIT

The District Court decision below gave inadequate weight to the legislative history of the Civil Rights Act of 1991 that, though not so stated in the Amended Act itself, Congress intended for the 1991 Amendments of the Civil Rights Act providing for a jury trial and compensatory and punitive damages in Title VII lawsuits filed subsequent to enactment whether or not the claims arose prior to enactment. Further, the Court failed to consider adequately the particular erroneousness of determining that petitioner Joseph's claims arose prior to enactment of the 1991 Amendments and denying the retroactive application of the Amendments to the instant case.

Here, although Petitioner Joseph received initial letter that Superintendent Casey recommended denial of tenure in June 1991, Petitioner Joseph engaged in a review process

which did not conclude until February 1992. Based on the applicable case law and the facts of the instant case, the District Court should have determined that Petitioner Joseph's case arose after the enactment of the 1991 Amendment, but, in any event, the Amendments should have been applied whether retroactively or not.

For these reasons, as well as the need for clarity as to the impact of this Court's earlier decision in Landgraf will have on claims of race discrimination, petitioner respectfully requests that this Court review the decision below.

I.

THE DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK ERRONEOUSLY DENIED PETITIONER'S DEMAND FOR A JURY TRIAL AND COMPENSATORY AND PUNITIVE DAMAGES AND MISAPPLIED THE LANDGRAF DECISION

The 1991 Amendments to the Civil Rights Act §102 provide for a jury trial and compensatory and punitive damages in civil rights cases. In Landgraf v. USI Film Products, 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994) this Court held "[s]ection 102 does not apply to a Title VII case that was pending on appeal when the 1991 Act was enacted". This Court further stated "We granted certiorari and set the case for argument with Rivers v. Roadway Express,

Inc., 511 U.S. 298, 114 S.Ct. 1510, 128 L.Ed.2d 274 (1994). Our order limited argument to the question whether §102 of the 1991 Act applies to cases pending when it became Law." **Id. at 251.**

Consideration of this matter by this Court is necessary to secure and maintain uniformity of the decisions in the Circuits. The decision below in this matter is contrary to the holdings of some other circuits and other district courts.

The Landgraf case did not involve a cause of action based on conduct that, as here, occurred both before and after November 21, 1991 and this Court made clear the issue for certiorari in Landgraf was the applicability of § 102 to cases then pending at the time of enactment.

As indicated in the facts above, Petitioner Joseph received notice of the recommendation for the denial of tenure in June 1991 from the Superintendent. It was not until February 1992, after Petitioner Joseph had participated in the process of review before the Chancellor's Committee, that she received notice of reaffirmation of the Superintendent's decision. The panel in the Second Circuit Court of Appeals erroneously concluded that in accordance with this Court's decision in **Delaware State College v. Ricks, 449 U.S. 250 (1980)** and New York Education Law, Petitioner Joseph's claim arose when she received notice in June 1991. (Apdx A, pp 11-14). The panel also erroneously concluded that Petitioner Joseph did not assert any claim that discriminatory conduct occurred after November 21, 1991 and, therefore, the

district court properly struck her demand for a jury trial. (Apdx A, p. 14). The panel seemed to ignore Petitioner Joseph's indication that in her complaint to the division of Human Rights she indicated that the actions Superintendent and the actions of the Chancellor and the Chancellor's Committee were discriminatory and were engaged in because she is Black. Moreover, the panel seemed to ignore that Petitioner Joseph's indication that in her complaint she refers to the defendant and its agents all of which would include the Superintendent, the Chancellor and the Chancellor's Committee.

II.

THE LEGISLATIVE HISTORY TO THE 1991 AMENDMENTS TO TITLE VII EVINCE CONGRESSIONAL INTENTION TO APPLY THE AMENDMENTS TO CASES FILED AFTER ENACTMENT

In November 1991, Congress enacted the Civil Rights Act of 1991 (Pub.L. 102-166, 105 stat. 1071 (1991)) which amended Title VII. The Civil Rights Act of 1991 included provision §102, which permitted litigants to recover compensatory and punitive damages for certain violations of Title VII of the Civil Rights Act of 1964 and provides for a trial by jury in cases where a litigant seeks such damages.

The Civil Rights Act of 1991 § 102 provides in pertinent part:

"(a) Right of recovery

(1) Civil rights

In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) [42 U.S.C.A. §§ 2000e-5 or 2000e-16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (42 U.S.C. 2000e-2 or 2000e-3) [42 U.S.C.A. §§ 2000e-2, 2000e-3, or 2000e-16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000e-5(g)], from the respondent.

* * *

(c) Jury Trial.--If a complaining party seeks compensatory or punitive damages under this section--

(1) any party may demand a trial by jury;" 42 U.S.C. 1981a(a) & (c)

While the language of §102 does not explicitly provide for retroactive application of the provision, the legislative history of the Civil Rights Act of 1991 is equivocal at best in supporting the position that such provision should not be applied retroactively. Indeed, one of the primary purposes of Congress in amending the Civil Rights Act was to eradicate discrimination throughout the economy and make whole those persons who had suffered from past discrimination. Landgraf v. USI Film Products, supra.

Indeed, this Court reviewed the legislative history of the Act in deciding Landgraf v. USI Film Products.

Refusal to retroactively apply the § 102 of the 1991 Amendments to such cases as the instant case would fly in the face of what appears to be the Congressional intent in enacting the Act.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals.

Dated: Brooklyn, New York
June 14, 1999

Respectfully submitted,

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